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December 16, 1999

Via hand delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

Re: CC Docket No. 99-295

Dear Ms. Salas:

The attached letter was sent to Chairman William Kennard on December 16, 1999, and should be made part of the record for the above-referenced docket. Thank you.

Very truly yours,

Florence Grasso
Florence M. Grasso

cc: Cecelia Stephens, Common Carrier Bureau

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12:05
[Handwritten signature and initials]



December 15, 1999

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DEC 16 1999
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

The Honorable William E. Kennard
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Bell Atlantic Section 271 Application for New York State

Dear Chairman Kennard:

I am writing to urge that the Commission deny Bell Atlantic's pending application, pursuant to section 271 of the Communications Act (the "Act"), to enter the in-region, interLATA market in New York. My views in this regard are strong, because I have seen the benefits that the Act, and the Commission's hard work in effectuating the Act, have brought to consumers. Covad has been at the forefront of this new competitive age, as a key innovator in broadband access services with a long list of "firsts" to its credit. Much work, however, remains. Large numbers of Americans have yet to see the benefits of broadband services, and we intend to be the leader in a geometric expansion of high-speed access services. For this to happen in Bell Atlantic's region, the Commission must insist that the mandate of the Act be fully complied with.

There is now a widespread consensus that Bell Atlantic has failed to satisfy its obligation to provide Covad and other competitors with nondiscriminatory access to unbundled loops. That consensus is reflected in the Justice Department's evaluation of Bell Atlantic's application, the presentations recently made to FCC staff, and your inquiry, referred to in Bell Atlantic's December 10 letter, as to whether separation would be an adequate safeguard against discrimination. If Bell Atlantic had met its burden of establishing compliance, the entire issue of Bell Atlantic's last minute separate affiliate gambit would be superfluous.¹

In short, the terms of the debate have now shifted from whether Bell Atlantic has complied--clearly it has not--to whether there are any post-entry measures that can bring it into compliance. The search for such after-the-fact remedies runs entirely counter to the rationale for the 271 process. As the Justice Department concluded in its evaluation of Bell

¹ Covad has demonstrated that Bell Atlantic-New York provisions less than 1/3 of our loops on time, and that the average time to delivery is 46 days while Bell Atlantic promises its own retail DSL service in a week. Bell Atlantic admitted, during the recent debates before FCC staff, that its data was limited to loops it had billed for, rather than all loops ordered. Thus, it is now clear that Bell Atlantic presented a self-selected, meaningless "sample" guaranteed to grossly overstate its actual performance. Moreover, Covad's 271 comments documented numerous instances of discriminatory, anticompetitive conduct by Bell Atlantic.

Atlantic's application, BOC incentives to cooperate with competitors will diminish significantly after entry into the long distance market.

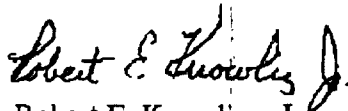
I see every day the impact of Bell Atlantic's failure to comply with the Act: disenchanted customers giving up on broadband, customers for whom no broadband services are available, and customers paying more or getting less than they would in a fully competitive environment. How much longer shall we tell these frustrated consumers to wait? For Bell Atlantic, comfortable in its assumption that the resolve to resist 271 applications will erode, there clearly is no urgency to the mandates of the Act.

If the Commission is determined to grant this application--and I stress that it cannot lawfully do so--it must attach two types of conditions that must be met before Bell Atlantic offers long distance services in New York. First, Bell Atlantic must be required to divest, at a minimum, its DSL operations from its supply of inputs such as loops, transport, collocation, and OSS. Second, it must be required to have met appropriate unbundling performance standards for at least sixty days before commencing long distance service. Our company will be submitting detailed comments elaborating on these conditions. I note here, however, that compliance with such conditions would be under Bell Atlantic's sole control. With its immense resources it could, if it chose to do so, easily provision--timely and properly--unbundled loop volumes that currently are only a fraction of its total access lines.

There is, however, a solution that would be far preferable to allowing Bell Atlantic to substitute a promise for the actual performance required by section 271. The Commission should deny the pending application, give Bell Atlantic a clear roadmap of what problems to fix and how to fix them, and invite Bell Atlantic to return to the Commission quickly with those problems solved for a fast-track approval of its subsequent application.

We appreciate your leadership and the hard work of you and your colleagues in ensuring that Bell Atlantic and other incumbent LECs comply with the obligations imposed on them by the Act. The Commission's action on this application will say much about whether, and how soon, the benefits of broadband services will be widely and readily available to the American people. I urge the Commission to insist on full compliance with the Act as the essential precondition for granting long distance authority to Bell Atlantic.

Sincerely Yours,



Robert E. Knowling, Jr.
President and CEO
Covad Communications Company

cc:

Commissioner Harold Furtchgott-Roth
Commissioner Susan Ness
Commissioner Gloria Tristani
Commissioner Michael Powell
Thomas C. Power, Office of the Chairman
Dorothy Attwood, Office of the Chairman
Kathryn C. Brown, Chief of Staff
Lawrence Strickling, Chief, Common Carrier Bureau
Robert Atkinson, Deputy Chief, Common Carrier Bureau
Carol E. Matthey, Chief, Policy Division, Common Carrier Bureau
Jake Jennings, Deputy Chief, Policy Division, Common Carrier Bureau
Michelle Carey, Deputy Chief, Policy Division, Common Carrier Bureau
Julie Patterson, Attorney-Advisor, Policy Division, Common Carrier Bureau
Robert Pepper, Chief, Office of Plans and Policy
Howard Shelanski, Chief Economist